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Via Electronic Mail
Richard.Norwood@usdoj.gov

February 26, 2015

Richard Norwood - Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Re: *California River Watch v. City of Carlsbad*
USDC Case No.: 3:14-cv-02812 W-JLB

Dear Mr. Norwood:

In compliance with 33 U.S.C. § 1365(c)(3), we enclose for review by the Department of Justice a copy of the Settlement Agreement and Mutual Release of Claims entered into by the parties in resolution of the above-captioned matter.

Sincerely,


Jerry Bernhaut

JB:lhm

Enclosure

cc: Shawn D. Hagerty, Esq. (via electronic mail)
BEST, BEST & KRIEGER
655 West Broadway, 15th Fl.
San Diego, CA 92101

Gene Tanaka, Esq. (via electronic mail)
BEST, BEST & KRIEGER
2001 No. Main St. Suite 390
Walnut Creek, CA 94596

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between California River Watch, a nonprofit public benefit corporation, on behalf of itself and its members ("CRW") and the City of Carlsbad, a municipal corporation and charter city organized under the City Charter and the laws of the State of California ("City"), (collectively the "Parties") as of the last date executed below (the "Effective Date"), with respect to the following facts and objectives.

RECITALS

WHEREAS, CRW is a 501(c) (3) nonprofit public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the rivers, creeks, and tributaries of California.

WHEREAS, the City provides wastewater collection services for approximately 85 percent of the City of Carlsbad, an area of about 32 square miles, via its ownership and/or operation of a wastewater collection system comprised of approximately 252 miles of gravity sewer pipelines, 16 lift stations, 6,300 manholes and 6.2 miles of force main.

WHEREAS, the City is enrolled under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, State Water Resources Control Board Order No. 2006-0003-DWQ ("SSO Order") and operates its collection system in accordance with the SSO Order.

WHEREAS, the City has performed a CCTV condition assessment of its entire gravity collection system, has a program to repair or replace identified defects in the system and intends to continue its CCTV and repair program to assess and repair its collection system at current levels.

WHEREAS, the City has standard operating procedures in place related to the reporting of and water quality monitoring for certain sanitary sewer overflows, and will refine these procedures as described in this Agreement.

WHEREAS, on or about July 31, 2014, CRW served the City with a Notice of Violations and Intent to File Suit under the Clean Water Act, CWA § 505, 33 U.S.C. § 1365, ("CWA Notice"), alleging various violations of the CWA by the City relating to activities and operations of the wastewater collection system, which is attached hereto as **Exhibit A**.

WHEREAS, the Parties have been engaged in ongoing settlement discussions to resolve the claims asserted in the CWA Notice.

WHEREAS, to preserve its legal rights during the pendency of settlement discussions, CRW filed, but did not serve, a Complaint for Injunctive Relief, Declaratory Relief, Civil Penalties, Restitution and Remediation, based on the CWA Notice, in the United States District Court for the Southern District of California, Case No. 14CV2812W JLB (the "CWA Complaint").

WHEREAS, CRW and the City, through their authorized representatives, and without either adjudication of CRW's claims or admission by the City of any alleged violation or other wrongdoing, wish to resolve in full CRW's allegations as set forth in the CWA Notice and CWA Complaint, through settlement to avoid the cost and uncertainties of litigation.

WHEREAS, CRW and the City have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving CRW's allegations set forth in the CWA Notice and CWA Complaint, including without limitation, any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the CWA Notice and CWA Complaint.

NOW THEREFORE, for good and valuable consideration through the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

AGREEMENT

I. REMEDIAL MEASURES

A. SEWER SYSTEM OVERFLOW RESPONSE

1. Within one (1) year from the Effective Date of this Agreement, the City shall modify its Sanitary Sewer Overflow ("SSO") report form to require (not merely have a space for) the following additional information:
 - a. The method or calculations used for estimating total spill volume, spill volume reaching surface waters, and spill volume recovered;
 - b. For Category 1 spills, and where feasible, a listing of nearby residents or business operators contacted to attempt to establish the SSO's start time, duration, and flow rate;
 - c. Provision for attachment of photographs taken of the manhole flow at the SSO site and of the spill volume if applicable, if photos can be taken without substantially impeding response measures; and,
 - d. When appropriate, a brief description of any clearly visible ecological impacts (e.g. fish kills) and any remedial measures undertaken in an appropriate category on the CIWQS reporting form.
2. Within one (1) year from the Effective Date of the Agreement, the City shall modify its SSMP to require water quality sampling and testing whenever an SSO of fifty (50) gallons or more enters the Buena Vista Lagoon, the Buena Vista Creek, the Agua Hedionda Lagoon, Agua Hedionda Creek, the Encinas Creek, the Batiquitos Lagoon or the San Marcos Creek. The SSMP modifications shall require that:

- a. The City will collect and test samples from three (3) locations, if feasible, and, when, in the City's best professional judgment, the conditions are safe for sampling. The three (3) locations will be the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include Ammonia, Fecal Coliform, E.Coli, Total Coliform, Dissolved Oxygen, Copper, Zinc and Biochemical Oxygen Demand (BOD). If the results of two (2) successive samples for Copper or Zinc are non-detect or below the applicable water quality objective, analysis of Copper or Zinc may be discontinued for future samples. Water quality sampling results will be reported in the SSO Report submitted to the CIWQS system.
 - b. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City shall, as soon as practicable but not later than thirty (30) days from receiving the test results, initiate spot repair or replacement of the pipe segment determined to be the source of the SSO, if structural defects in the pipe segment rather than an internal blockage caused the overflow. If internal blockage caused the overflow, the City shall, as soon as practicable but not later than thirty (30) days from receiving the test results, perform any necessary maintenance not undertaken at the time of the spill.
3. Within one (1) year from the Effective Date of the Agreement, the City will contract with a registered Environmental Health Specialist or biologist to develop a protocol to be implemented as part of the SSMP's defined SSO remediation procedures for any SSO releases to the above-defined waters that are one thousand (1,000) gallons or more. The City will submit the protocol to River Watch for review and comment prior to implementation as part of the SSMP.

B. LATERAL GRANT PROGRAM

Within one (1) year from the Effective Date of the Agreement, the City shall establish a lateral grant program and budget up to Fifty Thousand Dollars (\$50,000) per year, depending on sufficient demand, to implement the program. As part of the grant program, the City would agree to pay from budgeted funds up to one half (1/2) of the cost of a lateral repair replacement program for a maximum of Three Thousand Dollars (\$3,000). When the City notifies private lateral owners that cracks, roots or other defects have been identified during the CCTV'ing of the main sewer line, the City shall notify the private lateral owner of the availability of the grant program.

C. INFLOW SOURCE IDENTIFICATION

Within one (1) year of the Effective Date of this Agreement, the City shall initiate an investigation in collection system basins 18C-3 and 5D-28 to identify direct sources of rain water intrusion (inflow) into sewer lines during peak rain events, as indicated in the City's Sewer Flow Verification & Inflow and Infiltration Analysis. The Parties acknowledge that completion of this investigation will depend on the actual occurrence of peak rain events.

D. SEWER SYSTEM ASSESSMENT

1. Within five (5) years of the Effective Date, the City shall re-CCTV the remaining portions of its interceptor sewer lines that are larger than 12 inches and that have not already been CCTV'd within five (5) years prior to the Effective Date.
2. The City shall provide CRW with a copy of the City's Final Asset Management Plan within forty-five (45) days of its completion.
3. Within two (2) years of the Effective Date, the City shall develop a process to complete an assessment of those portions of its force mains that have not been previously assessed, as well as a process to document such assessment. The City shall implement and document the assessment of its force mains within five (5) years of the Effective Date.

E. TASK CONFIRMATION

1. The City shall provide written confirmation to CRW detailing the City's completion of the tasks described in Section I. A through D above.
2. Completion of all tasks described in Section I. A through D above shall constitute completion of all remedial obligations set forth in this Agreement, and the City shall have no continuing reporting obligation to CRW.

II.

ATTORNEY'S COSTS AND FEES

The City shall pay to CRW, within thirty (30) days of the Effective Date of this Agreement, the amount of Thirty-Five Thousand Dollars (\$35,000), representing full satisfaction of all claims by CRW for CRW's investigative, expert, and attorneys' fees and costs. Payment shall be made by the City to CRW in the form of a single check payable to "California River Watch," and shall constitute full payment for all costs of anticipated litigation and attorneys' fees incurred by CRW that have or could have been claimed in connection with CRW's allegations in its CWA Notice and CWA Complaint.

III.

TERMINATION DATE

This Agreement shall terminate five (5) years from the Effective Date, or when the City has completed the Remedial Measures set forth in Section I. A through D above, whichever is earlier.

IV.

RELEASE OF LIABILITY AND COVENANT NOT TO SUE

A. Upon the Effective Date of this Agreement, CRW, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter (collectively "Releasors"), agrees that it releases, acquits and

forever discharges the City, its elected and appointed officials, officers, employees, agents, attorneys, legal successors and assigns, and any other persons acting on the City's behalf (collectively "Releasees") , from all Clean Water Act claims and demands, actions, causes of action, obligations, (except for obligations under this Agreement,) liabilities, indebtedness, breach of duty, claims for injunctive relief and other equitable relief, suits, liens, damages, losses, costs or expenses, including attorneys' fees, (except for costs and fees pursuant to Section II above,) known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen based upon the claims alleged, or which could have been alleged, in the CWA Notice and the CWA Complaint including without limitation, any and all claims for violations of the Clean Water Act or California law which occurred at any time up to the Effective Date of this Agreement.

B. The Parties acknowledge that they are familiar with section 1542 of the Civil Code of the State of California. Each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge they have specifically reviewed with their respective attorneys the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

C. CRW shall initiate the process to request a dismissal, with prejudice, of the CWA Complaint, Case No. 14CV2812W JLB, filed November 25, 2014, including providing notice as required by CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), to the Attorney General and the Administrator. A request for dismissal with prejudice will only be filed after the United States has either completed its review of this Agreement or the forty-five (45) day review period has expired, whichever occurs first.

D. For the period beginning on the Effective Date and ending five (5) years from the Effective Date of this Agreement, CRW agrees to a covenant that neither CRW, its officers, executive staff, members of its governing board nor any organization under the control of CRW, its officers, executive staff, or members of its governing board, will file a complaint pursuant to the CWA Notice or CWA Complaint or serve any new 60-day CWA Notice or file any lawsuit against the City seeking relief for violations as alleged or as could have been alleged in the CWA Notice or CWA Complaint, nor will CRW support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

V.
DISPUTE RESOLUTION PROCEDURES

A. Any disputes with respect to any of the provisions of this Agreement shall be resolved through the following procedure: The Parties covenant and agree that, if either party believes the other is in violation of one or more terms of the Agreement, the party shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional thirty (30) days, the Parties will meet and confer in a good faith attempt to resolve their dispute. If the Parties cannot informally resolve the dispute, they will enter into binding arbitration, conducted by an arbitrator agreed upon by the Parties. Either party may request that the presiding judge of the North San Diego County Superior Court select an arbitrator if the Parties cannot reach an agreement. The arbitration shall be binding and not subject to ordinary judicial appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure Sections 1280, et seq. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Service) to the extent other conventional rules are not promptly agreed to by the Parties. The relief the arbitrator is empowered to award is limited to injunctive relief to take action specified in this Agreement, and the arbitrator shall be empowered to determine a prevailing party and may award payment of reasonable attorneys' fees and costs to a prevailing party. To the extent there are multiple issues with a different prevailing party, the arbitrator may take those facts into account in terms of an award for fees and costs, and can order each party to bear their own costs.

B. If CRW asserts that the City is in violation of this Agreement, and the City corrects the action or inaction within sixty (60) days of written notice from CRW describing the asserted violations, no further enforcement action under the terms of this Agreement, including the dispute resolution process described above, shall be taken by either party.

VI.
FORCE MAJEURE

Separate from, and in addition to, any other limitations on the City's obligations under this Agreement, the City's obligations to comply with any provisions of this Agreement shall be excused or deferred if compliance, or a delay in compliance, is caused by an event or circumstance beyond the reasonable control of the City or any entity controlled by the City, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by the City or any entity controlled by the City. Where implementation of the actions set forth in this Agreement within the deadlines prescribed becomes unachievable, despite timely good faith efforts, the City shall notify CRW in writing within thirty (30) days of the date that the City knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the Parties, compliance shall be excused or new performance deadlines shall be established by agreement of the Parties. In the

event that the Parties cannot timely agree, either party shall have the right to invoke the dispute resolution procedure described herein.

VII. GENERAL PROVISIONS

A. Construction. The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the Clean Water Act, or specifically herein.

B. Choice of Law. This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

C. Severability. In the event that any provision, section, or sentence of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

D. Correspondence/Notices: All notices required herein or any other correspondence pertaining to this Agreement shall be sent by regular, certified, overnight, or electronic mail as follows:

If to CRW:

California River Watch
290 S. Main Street, #817
Sebastopol, CA 95472

And:

Jerry Bernhaut, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Telephone: (707) 528-8175
Email: j3bernhaut@gmail.com

If to the City:

Wendy Chambers, Utilities Director & General
Manager
City of Carlsbad
Carlsbad Municipal Water District
5950 El Camino Real
Carlsbad, CA 92008

And:

Shawn D. Hagerty, Esq.
BEST, BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, CA 92101
Tel. 619-525-1327
Email: Shawn.Hagerty@bbklaw.com

Notifications of communications shall be deemed submitted on the date that they are sent by electronic mail, postmarked and sent by first-class mail, or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

E. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original document. Electronic, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Agreement.

F. Assignment. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

G. Modification. This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.

H. Full Settlement. This Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

I. Integration. This is an integrated Agreement. This Agreement is intended to be a full and complete statement of the terms of the agreement between the Parties and expressly supersedes any and all prior oral or written agreements covenants, representations, and warranties (express or implied) concerning the subject matter of this Agreement.

J. Negotiated Agreement. The Parties acknowledge they have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.


K. Authority. The undersigned representatives for CRW and the City each certify that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement.

[Signatures on following page]

THE PARTIES HEREBY ENTER INTO THIS AGREEMENT.


DATED: 2-16-15

CALIFORNIA RIVER WATCH

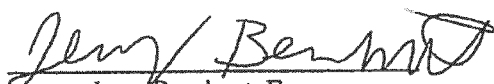
By: 
Larry J. Hanson
Board President

DATED: 2-25-15


THE CITY OF CARLSBAD

By: 
City Manager

APPROVED AS TO FORM:


Jerry Bernhaut, Esq.
Attorney for California River Watch

DATED: Feb. 16, 2015


Shawn D. Hagerty, Esq.
Attorney for the City of Carlsbad

Dated: 2/12/15

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***Via Certified Mail –
Return Receipt Requested***

July 31, 2014

Wendy Chambers, Utilities Director & General Manager
City of Carlsbad
Carlsbad Municipal Water District
5950 El Camino Real
Carlsbad, CA 92008

City Council
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Ms. Chambers and Members of the City Council:

NOTICE

The Clean Water Act ("CWA" or "Act") requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

California River Watch ("River Watch") hereby places the City of Carlsbad, and City of Carlsbad Municipal Water District, a subsidiary district of the City of Carlsbad, collectively hereinafter referred to as "the City," on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and consistent with the Code of Federal Regulations, and the Regional Water Quality Control Board.

Notice of Violations Under the CWA - Page 1

San Diego Region, Water Quality Control Plan ("Basin Plan"), as exemplified by the illegal discharges of untreated sewage from the Carlsbad Municipal Water District collection system to United States Waters without a National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that discharge of pollutants is prohibited with the exception of enumerated statutory exceptions, CWA § 301(a), 33 U.S.C. § 1311(a). One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1365, which authorizes citizen enforcement of violations of effluent standards or limitation, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). Currently, the City has no NPDES permit allowing it to discharge pollutants to waters of the United States. Therefore, by virtue of its discharge of untreated sewage to United States waters without a NPDES permit, the City has been and continues to be in violation of CWA § 301(a), 33 U.S.C. § 1311(a).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. (See 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Diego Region ("RWQCB").

BACKGROUND

The City of Carlsbad is a seaside resort in northern San Diego County with a population estimated in 2012 at 109,318. Its geography is characterized by 3 lagoons. It occupies a 7-mile stretch of Pacific coastline. The City's sewer service area is comprised of 4 major drainage basins which extend from approximately the eastern service area boundary and drain west to the coast.

The primary land use in the City's sewer service area is residential, with local and regional commercial centers and several large industrial business parks located along the east side of El Camino Real. McClellan-Palomar Airport and several resort

complexes and tourist related facilities are centered around the Legoland amusement park and the Park Hyatt Aviara Resort. The major industrial areas, including the airport, are located in the center of the service area along Palomar Airport Road.

The City's collection system provides wastewater collection services to 30.5 square miles through 252 miles of gravity sewer pipelines, 16 lift stations, and approximately 6,300 manholes. The City owns and maintains approximately 6.2 miles of force main. The material for the gravity pipelines is vitrified clay pipe, reinforced concrete pipe with a poly vinyl chloride liner (T-Lock liner) or Hobas pipe. The service area for the City includes the majority of Carlsbad with the exception of the southeast corner. Wastewater collection in the southeastern area, which includes the community of La Costa, is provided by the Vallecitos Water District and Leucadia Wastewater District. All wastewater flows are conveyed to the Encina Water Pollution Control Facility (EWPCF) located in Carlsbad, for treatment, and then disposal through the ocean outfall, or further treatment and delivery to the adjacent Carlsbad Water Recycling Facility for reuse.

The City's sewer service area extends from the Pacific Coast approximately 4 to 5 miles inland. Sewer flows are conveyed in 6 interceptors to the EWPCF, which is located along the coast. The cities of Vista, Carlsbad, Encinitas, and the Leucadia Wastewater District have capacity ownership rights in the interceptor pipelines.

The City has a history of sewer system overflows (SSOs) from its aging sewer lines. Structural defects in the collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure, which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Batiquitos Lagoon, Buena Vista Lagoon, Encinas Creek, and the Pacific Ocean, all waters of the United States.

As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the City's collection system experienced 21 SSOs between July 21, 2009 and July 21, 2014, with a combined volume of 312,378 gallons – 37,550 gallons of which was discharged to surface waters. For example, on October 7, 2012, a spill occurred at 7382 Gabbiano Lane in Carlsbad, caused by a structural failure of sewer pipe. The spill volume was reported by the Carlsbad Municipal Water District as estimated at 34,040 gallons – 32,040 of which reached surface water, impacting Batiquitos Lagoon. On February 22, 2010, a spill occurred at 2500 Marron Road in Carlsbad. The spill was reported as 1,000 gallons, none of which was recovered, and the spill reached the fishing areas of Buena Vista Lagoon.

The City has a history of non-compliance with the SSO reporting requirements mandated by the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems (Statewide WDR). The Statewide WDR requires the reports of SSOs to the CIWQS. The SSO reporting system shall include an estimate of the volume of any spill, the volume recovered, and the volume which reached a surface water. The City's field reports regularly indicate the SSO start time as the same time or within a few minutes of the time the City was notified of the SSO. For example, in reporting the spill which occurred at 1687 Calliadra Road in Carlsbad on April 24, 2013, the City's field report indicates both the estimated spill start time and the time the sanitary sewer agency was notified as exactly 11:00:00. These equivalencies are highly unlikely and result in an underestimation of the duration of the spill.

The City's common practice of underestimating the duration of the spill leads to underestimating the volume of the spill. The City's SSO reports generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume reaching a surface water. In the report referenced above the entry for item 44- "Explanation of volume estimation method used" is stated as "null". River Watch contends there is a high degree of likelihood that the City regularly underestimates the volume of SSOs as well as the volume which reaching a surface water.

In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent water with untreated sewage¹. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the City's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The chronic defects in the City's collection system pose a substantial threat to public health.

Numerous critical habitat areas are found within areas of these SSOs. Neighboring waterways to Carlsbad include ecological reserves, coastal wetlands, and marine conservation areas. There is no record of the City performing any analysis of the

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See the Report of Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

Any point source discharge of sewage effluent to waters of the United States must comply with technology based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by the City as described herein also constitute a nuisance. These discharges are: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during or as a result of the transportation, disposal or treatment of wastes.

The City's ongoing violations – discharging pollutants to waters of the United States without a NPDES Permit – pose an immediate threat to public health and the environment, both from surface water impacts of overflows and underground leakage of untreated sewage, which impact both surface and groundwater. Furthermore, the illegal discharge of untreated wastes from the City's collection system is a significant contribution to the degradation of the Pacific Ocean and its tributaries and nearby waters such as Batiquitos Lagoon, Agua Hedionda Lagoon, Calavera Lake, and Buena Vista Lagoon, with serious adverse effects on the many beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the City's operation of its collection system into compliance with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

- 1. The specified standard, limitation, or order alleged to have been violated.**

River Watch has identified discharges of raw sewage from the City's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. The activity alleged to constitute a violation.

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the California State Water Resources Control Board's CIWQS SSO Public Reports and other public documents in the City's possession or otherwise available to the City, and incorporates by reference records cited from which descriptions of specific incidents were obtained.

3. The person or persons responsible for the alleged violation.

The entities responsible for the violations alleged in this Notice are hereby places the City of Carlsbad, and City of Carlsbad Municipal Water District, a subsidiary district of the City of Carlsbad, collectively hereinafter referred to as "the City," as well as employees of the City responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The location of the alleged violation.

The location or locations of the various violations are identified in records created and/or maintained by or for the City which relate to the City's sewage collection system as further described in this Notice.

5. The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.

River Watch has examined records of the SWRCB and the RWQCB relating to the City's collection system for the period from July 21, 2009 to July 21, 2014. The range of dates covered by this Notice is July 21, 2009 to July 21, 2014. River Watch will from time to time update this Notice to include violations which occur after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The full name, address, and telephone number of the person giving notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the waters of California including, but not limited to, its rivers, creeks, streams, tributaries, wetlands, vernal pools, and groundwater. River Watch's southern California mailing address is 3655 Westwood Blvd., #17, Los Angeles, CA 90034. River Watch may be contacted via email: US@ncriverwatch.org,

or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
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P.O. Box 5469
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VIOLATIONS

River Watch contends that for the period from July 21, 2009 to July 21, 2014, the City has violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from its collection system to waters of the United States without a NPDES permit. Said violations are evidenced in the City's Self Monitoring Reports, testing data compiled in compliance with orders of the SWRCB, and other documentation filed with the SWRCB or in the City's possession, and evidenced by the CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

Violations	Description
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- | | |
|------|--|
| 1825 | Collection system overflows caused by underground exfiltration. - This is an event in which untreated sewage is discharged from the collection system prior to reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5-year period from July 21, 2009 to July 21, 2014. Evidence to support the allegation of underground discharge of raw sewage exists in the City's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the EWPCF reported in the City's records, and video inspection of the collection system. |
| 25 | SSOs - as evidenced in the SWRCB's CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents and overflows incorrectly reported as not reaching a surface water. |

- 63 Failure to report SSOs – It is estimated by the EPA and private studies that for every SSO reported, there are at least 3 that go unreported. In some cases the overflows occur during storm events or due to stoppages and there is no incident report made due to lack of any observation of the event. In other cases SSO events are reported, but by the time personnel arrive at the site, the overflows have ceased and no follow-up is done. In some cases the incident is reported and observed by staff, but a formal report is not made to the State, in violation of the Statewide WDR.

REMEDIAL MEASURES REQUESTED

1. DEFINITIONS

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.
- C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
- 5 – Most significant defect
 - 4 – Significant defect
 - 3 – Moderate defect
 - 2 – Minor to moderate defect
 - 1 – Minor defect

- Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every 5 years. Said program to begin 1 year following the Full Condition Assessment described above.

B. SSO Reporting and Response

Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

- The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.
- For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
- Water quality sampling and testing to be required whenever it is estimated that 50 gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. The City shall collect and test samples from 3 locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.
- Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

- Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines including Batiquitos Lagoon, Buena Vista Lagoon and Encinas Creek to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

- Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;
- The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years;
- A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;
- Upon replacement or repair of any part of the sewer lateral;
- Upon issuance of a building permit with a valuation of \$25,000.00 or more;
- Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the community of Carlsbad. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, surfing, tide pool exploring, picnicking, wedding ceremonies, hiking, photography, painting, nature walks and the like. The members' health, use and enjoyment of these natural resources are specifically impaired by the City's alleged violations of the CWA as set forth herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505 (a) against the City of for the violations identified in this Notice.

During the 60-day notice period River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the City wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues before the end of the Notice period. River Watch will not delay the filing of a lawsuit if discussions are continuing when the 60-day notice period ends.

Very truly yours,


Jerry Bernhaut

JB:lhbm

cc: Administrator
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